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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,827	10/03/2003	Rene Kapik	9305-18	1137
20792	7590	02/04/2005	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			JOLLEY, KIRSTEN	
PO BOX 37428			ART UNIT	
RALEIGH, NC 27627			PAPER NUMBER	

1762

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/678,827

Applicant(s)

KAPIK, RENE

Examiner

Kirsten C Jolley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 25-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims 25-31 drawn to an invention nonelected with traverse in the paper of June 14, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37.CFR 1.144) See MPEP § 821.01.

Response to Arguments

2. The claim objection has been withdrawn in response to Applicant's amendment to claim 12.

3. Applicant's arguments filed November 12, 2004 have been fully considered but they are not persuasive.

With respect to the 35 USC 102(e) and 103(a) rejections over Wu et al., Applicant argues that there is no disclosure anywhere in Wu of applying a barrier finish to a nonwoven web and/or curing the barrier finished, and/or stretching a nonwoven web with a barrier finish in the widthwise direction without hindering barrier properties of the web. Applicant states that Wu is directed to producing stretched, microporous films and laminates comprised of nonwoven webs and stretched microporous films, and that such films are not a barrier finish as recited in the claims of the present invention. The Examiner notes that the term "barrier finish" is not defined in the specification or in the claims. Page 2 of the specification broadly states that a barrier finish of the invention serves as a barrier to liquids. It is noted that in forming the laminates in the process of Wu et al., Wu et al. teaches that a thermoplastic melt extrudate is introduced into a

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nip of rollers with a nonwoven fibrous web (col. 4, lines 47-50; col. 5, lines 12-13; and the Examples). The process of applying a *melt extrudate* to a fibrous web meets the claimed limitation of “applying a barrier finish to the web”. Wu et al. teaches that the thermoplastic film/extrudate that is applied to the fibrous web provides a breathable liquid barrier (col. 4, lines 57-59 and col. 3, lines 28-30), therefore the extruded thermoplastic film meets the limitation of a “barrier finish” as used in the claims.

Further, it is noted that Wu et al. teaches stretching the formed laminate in the cross-machine (widthwise) direction in col. 9, lines 19-28. Wu et al. states that “The results of such ... stretching produces laminates that have excellent breathability and liquid-barrier properties, yet provide superior bond strengths and soft cloth-like textures.” Therefore it is known that the stretching does not hinder barrier properties of the web. As stated in the prior Office action, the subsequent cooling and heating steps cure the barrier finish/thermoplastic film. The term “cure” is broadly defined in Merriam-Webster’s Collegiate Dictionary, Tenth Edition as “to prepare or alter esp. by chemical or physical processing for keeping or use.” It is the Examiner’s position that the process of Wu et al. meets all of the claimed limitations.

With respect to the 35 USC 103(a) rejections over Sneed et al. in view of Powers, Applicant argues that the web plies of Sneed do not have a barrier finish applied thereto prior to being stretched and enmeshed with each other via the interdigitating rollers. Applicant further argues that there is no disclosure anywhere in Powers regarding applying barrier finishes to nonwoven webs. Applicant states that moreover, there is no disclosure anywhere in Powers regarding stretching nonwoven webs that have barrier finishes applied thereto. First, the Examiner maintains that Powers does teach applying a “barrier finish” to a nonwoven web. It is

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noted that the exemplary finish composition disclosed in Example 1 on page 12 of the specification comprises an antistatic agent and fluorocarbon repellent agent similar to the exemplary ingredients in the finishing composition of Powers (col. 6, lines 43-45). Further, it is noted that Powers teaches measuring the liquid barrier properties of its product (col. 5, lines 16-17). Second, it is acknowledged that Sneed does not teach applying a barrier finish and Powers does not teach stretching, as discussed in the prior Office action. However, the Examiner maintains that the *combination* of Sneed et al. in view of Powers suggests applying a barrier finish to a nonwoven barrier fabric web and then stretching the web in a cross direction. The test of obviousness is not express suggestion of the claimed invention in any or all references but rather what the references taken collectively would suggest to those of ordinary skill in the art presumed to be familiar with them. *In re Rosselet*, 347 F.2d 847, 146 USPQ 183 (CCPA 1965); *In re Hedges*, 783 F.2d 1038. One skilled in the art, upon seeing the two references in combination, would have been motivated to apply the barrier finish coating of Powers to Sneed et al.'s nonwoven web in order to provide Sneed et al.'s barrier fabric with desirable antistatic and repellent properties taught by Powers. One skilled in the art would expect successful results since Powers states "the present invention is suitable for treating nonwovens broadly."

With respect to the 35 USC 103(a) rejections over Powers or Snowden taken in view of Sneed et al., Applicant argues that there is no disclosure anywhere in Snowden regarding stretching a nonwoven web. It is acknowledged that the Snowden reference does not teach stretching in a cross machine direction, and for this reason the Sneed et al. reference is applied, as discussed in the prior Office action. Applicant argues that there is no disclosure anywhere in

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Powers regarding applying barrier finishes to nonwoven webs. The Examiner disagrees for the reasons discussed above.

Finally, Applicant argues that no clear and patentable evidence has been set forth as to why Powers or Snowden would lead one skilled in the art to modify Sneed to be concerned about stretching a web having a barrier finish thereon without hindering the barrier properties of the web. The Examiner maintains that there is motivation for modifying the Powers or Snowden references to incorporate a stretching step, as taught by the Sneed et al. reference (not modifying Sneed with the teachings of Powers and Snowden as stated in Applicant's arguments). Powers and Snowden et al. both teach that the bonding of their SMS layers may be performed by a number of conventionally known techniques. One skilled in the art would have been motivated to look to the prior art for convention means of bonding. Sneed et al. is cited for its teaching of stretching multiple nonwoven layers widthwise simultaneously while also bonding the layers using interdigitating rollers. It would have been obvious for one skilled in the art to have used the bonding method of Sneed et al. to bond and stretch the SMS layers and form a laminate in the processes of Powers or Snowden et al. with the expectation of successful results since the method of Sneed et al. is suited to bonding similar nonwoven layers of barrier material, and because Powers and Snowden et al. teach that a conventional bonding method may be used.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 6, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Wu et al. (US 6,656,581).

The rejections are maintained for the reasons discussed in the prior Office action, as well as for the reasons discussed in section 3 above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-5, 7, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (US 6,656,581).

The rejections are maintained for the reasons discussed in the prior Office action, as well as for the reasons discussed in section 3 above.

8. Claims 1-8 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sneed et al. (US 4,517,714) in view of Powers (US 5,711,994).

The rejections are maintained for the reasons discussed in the prior Office action, as well as for the reasons discussed in section 3 above.

9. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powers (US 5,711,994) or Snowden et al. (US 2003/0045193), taken in view of Sneed et al. (US 4,517,714).

The rejections are maintained for the reasons discussed in the prior Office action, as well as for the reasons discussed in section 3 above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kirsten C Jolley whose telephone number is 571-272-1421. The examiner can normally be reached on Monday to Thursday and every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P Beck can be reached on 571-272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kirsten C Jolley
Primary Examiner
Art Unit 1762

kcj